

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

ROBERT ALLEN SHORES
10652 NORTHRIDGE HILL DRIVE
STOCKBRIDGE, GA 30281

Respondent.

Case No. 2007-192

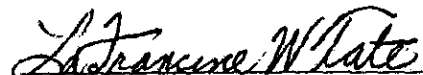
OAH No. L2007030712

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on September 6, 2007.

IT IS SO ORDERED August 6, 2007.



President
Board of Registered Nursing
Department of Consumer Affairs
State of California

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ROBERT ALLAN SHORES,

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Respondent.

PROPOSED DECISION

On April 26, 2007, Deborah Myers, Administrative Law Judge, Office of Administrative Hearings, Los Angeles, State of California, heard this matter.

Complainant, Ruth Ann Terry, was represented by Linda Sun, Deputy Attorney General.

Respondent, Robert Allan Shores (Respondent), represented himself.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision.

ISSUES

1. Whether Respondent was convicted of crimes substantially related to the qualifications, functions and duties of a registered nurse under Business and Professions Code section 480, subdivision (a)(1)? (Alleged as the First Cause for Denial of Application.)
2. Whether Respondent committed acts of dishonesty, fraud or deceit under Business and Professions Code section 480, subdivision (a)(2)? (Alleged as the Second Cause for Denial of Application.)
3. Whether Respondent committed acts, which if performed by a licensed registered nurse, would be grounds for suspension or revocation of the license under

Business and Professions Code section 2761, subdivisions (a) and (f)? (Alleged as the Third Cause for Denial of Application.)

FACTUAL FINDINGS

The Administrative Law Judge makes the following Factual Findings:

1. The Statement of Issues was made by Ruth Ann Terry (Complainant), Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs, State of California, (Board), acting in her official capacity.

2. On or about May 2, 2004, Respondent submitted an Application for Licensure by Examination to the Board, which he certified as truthful on May 2, 2004. The Board denied the application on September 8, 2005, and issued the Statement of Issues on January 18, 2007, pursuant to Business and Professions Code sections 2736, 2761, and 480.

3. The following amendment to the Statement of Issues made by stipulation at the administrative hearing:

(A) Paragraph 7(a), line 13 was amended to read "which was reduced to a misdemeanor under Penal Code section 17, subdivision (b)."

Convictions

4. On January 26, 2005, Respondent pled nolo contendere and was convicted of violating Penal Code section 666 (petty theft with a prior conviction and jail term), a felony, in Case No. PA049754 in the Los Angeles Superior Court, State of California.

5. Imposition of sentence was suspended and Respondent was placed on formal probation for three years under certain terms and conditions. He was ordered to serve 14 days in county jail, and to pay fines and fees of \$220. A probation fee of \$200 was imposed and stayed pending successful completion of probation. The felony was reduced to a misdemeanor, and the formal probation was converted to summary probation on February 28, 2005.

6. The facts and circumstances surrounding the conviction are that Respondent stole several bottles of liquor from How's Market without paying for the items.

7. On October 4, 1997, Respondent pled no contest to violating Vehicle Code sections 23103 (reckless driving) under 23103.5 (reckless driving involving alcohol

or drugs), a misdemeanor, in Case No.7SF05529 in the Municipal Court of Los Angeles, State of California.

8. Imposition of sentence was suspended and Respondent was placed on summary probation for two years under certain terms and conditions. He was ordered to serve eight days in county jail and to pay \$340 in fines and fees. The record was inconsistent as to whether Respondent was required to complete a drug and alcohol program and whether his driver's license was suspended.

9. The facts and circumstances surrounding the conviction are that Respondent drove in a reckless manner which involved drugs or alcohol.

Factors in Aggravation

10. Respondent suffered 12 convictions between 1980 and 1997, for attempted robbery, second-degree robbery and petty theft with prior convictions, all but one of which are felonies. He was sentenced to a three year prison term, a seven year prison term, and two parole violation prison terms of six months and ten months.

11. At the administrative hearing, Respondent admitted to a recent conviction in August 2006 in the Los Angeles Superior Court, North Valley District. Respondent pled guilty to two counts of possessing heroin and one count of soliciting the purchase of heroin, all separate acts that occurred within 90 days of each other and were the subject of one prosecution. Respondent was charged with a "three strikes" felony, but Commissioner Harkavy diverted him to a Proposition 36 program, the successful completion of the terms which will result in the dismissal of the case. Imposition of a three year prison sentence was suspended and Respondent was placed on formal probation for a period of three years. He was ordered to complete a 12 month drug rehabilitation program and pay various fines. Through the Tarzana Treatment Center, Respondent completed the first six-month segment, and is now participating in the six-month after-care program. He attends counseling once a month, group therapy once a week, Narcotics Anonymous (NA) and Alcoholics Anonymous (AA) three to four times a week, and produces random drug samples three times a week.

Factors in Mitigation

12. Respondent attributes his long criminal history to his lengthy drug addiction. He stole "expensive" alcohol to support his cocaine and narcotics habit, which cost up to \$150 per day. Respondent believes he relapsed in 2006 because he was not committed to a lifestyle of sobriety, as he is now.

Rehabilitation

13. Respondent testified in a sincere, direct and articulate manner. He volunteered information concerning his 2006 convictions, of which the Board had no previous knowledge. Respondent openly and candidly discussed his long-term drug addiction over the last 20 years. He discussed his previous, unsuccessful efforts at overcoming his addiction. Respondent is now committed to his sobriety, which dates to September 1, 2006. He understands the gravity of the disease of addiction, and is dealing with the underlying emotional issues which led him to use drugs. Respondent faces the daunting task of coping with a deadly, incurable but treatable disease, and he uses the 12-step program principles and the support of his NA sponsor to get through each day. Respondent provided recent sign-in sheets from his NA meetings.

14. While in prison, Respondent obtained his General Education Degree (GED). After his release, he attended Los Angeles Pierce Community College, and graduated from the University of Southern California (USC), School of Nursing in May 2004. He earned an academic scholarship.

15. Respondent provided numerous letters of overwhelming support for his licensure authored by his chemical dependency counselors at Tarzana Treatment Center; Dr. Robert Robertson, a Department of Corrections dentist who trained Respondent to act as his surgical assistant at Sierra Conservation Center and encouraged him to pursue his educational goals; his NA sponsor; his former English professor from USC; a youth pastor at Shepherd of the Hills; his former human anatomy professor at Pierce College; his former clinical nursing instructor from USC; his former internship professor from University of California, Los Angeles (UCLA) Medical Center; his former nursing curriculum professor from USC; a fellow registered nurse from UCLA; his community and home health instructor from USC; his former clinical nursing and theory professor from USC; a registered nurse and friend; and the retired Department Chair of the USC School of Nursing. All of these letters spoke highly of Respondent's skills and abilities as a nursing student and surgical assistant, his potential as a registered nurse, his compassion and volunteer efforts at church crisis hotlines and other violence intervention programs, and his dedication and commitment to patients and to his chosen field. Only the letters from his NA sponsor and his chemical dependency counselors were authored after his 2006 convictions, and they spoke of his progress in his 12-step NA program, his drug program and his 36 clean random drug samples. Dr. Robertson's letter spoke of his strong support for Respondent confronting his drug addiction.

16. In 2007, Respondent completed CPR and Automated External Defibrillation courses, Phlebotomy courses, and passed the National Certification Exam with a score of 91 percent. He is a National Certified Phlebotomy Technician as of April 2007.

17. Once licensed, Respondent will be offered a permanent position at Garfield Medical Center as a lab technician in the Hematology Department, due to his successful internship there as a phlebotomy technician. He would be responsible for drawing blood samples and processing those samples in the lab. Respondent previously worked as a nursing recruiter for "DNA", but was terminated after six months, which he believes may be due to his criminal background. He is currently unemployed and focuses on complying with the terms of his probation. Respondent lives with his widowed 80-year-old mother. He is engaged to be married and has a child from a previous relationship.

18. Respondent is committed to nursing and hopes to prove that his passion for his chosen field outweighs his aberrant criminal behavior. Respondent is willing to comply with any restrictions on his licensure, including random, daily drug testing at his own expense.

LEGAL CONCLUSIONS

Pursuant to the foregoing Factual Findings, the Administrative Law Judge makes the following legal conclusions:

1. Cause exists, under Business and Professions Code section 480, subdivision (a)(1) to deny Respondent's application as he was convicted of crimes substantially related to the qualifications, functions and duties of a registered nurse, pursuant to Factual Findings 4, 5, 6, 7, 8, 9, 10 and 11.

2. Cause exists, under Business and Professions Code section 480, subdivision (a)(2) to deny Respondent's application for having committed acts of dishonesty, pursuant to Factual Findings 4, 5, 6, 7, 8, 9, 10 and 11.

3. Cause exists, under Business and Professions Code section 2761, subdivisions (a) and (f) to deny Respondent's application for having committed acts, which if performed by a licensed registered nurse, would be grounds for suspension or revocation of the license, pursuant to Factual Findings 4, 5, 6, 7, 8, 9, 10 and 11.

4. Respondent has a total of four felony convictions since he applied for his registered nurse certificate in 2004; one for petty theft with a prior conviction, two for possession of heroin, and one for soliciting the purchase of heroin. While the three heroin convictions may be dismissed under the Proposition 36 program when Respondent completes his court ordered terms, the long-term underlying drug addiction which spurred the convictions is problematic for the safety of the public. These recent convictions are substantially related to the qualifications, functions and duties of a registered nurse. A registered nurse would have access to numerous controlled substances, including narcotics, in the hospital pharmacy or medical clinic. The potential for drug abuse by a recovering drug addict is clear.


5. Respondent deserves praise for his hard work and courage in confronting his drug addiction. The path on the road to recovery is difficult and challenges even the most resolute. Respondent has struggled on this path before, with little success and a recent relapse. His current efforts at sobriety should be lauded. His nine-month sobriety, and his 36 clean, random drug samples, and his new insight into his disease are very encouraging. Respondent presented himself as a bright, capable, and dedicated individual who seeks to prove himself as a consummate nursing professional in his chosen field. Respondent has impressed many of his nursing professors, a surgical dentist, and several nurses with his obvious abilities in this field. Respondent is encouraged to continue his efforts at maintaining his sobriety, as more time is needed to establish his true commitment and success toward this end.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Respondent's application for a registered nurse certificate is denied.

May 22, 2007


DEBORAH MYERS
Administrative Law Judge
Office of Administrative Hearings

1 BILL LOCKYER, Attorney General
of the State of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 LINDA L. SUN, State Bar No. 207108
Deputy Attorney General
4 California Department of Justice
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-6375
6 Facsimile: (213) 897-2804

7 Attorneys for Complainant

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues Against:

Case No. 2007-192

13 ROBERT ALLAN SHORES
17548 Los Alimos Street
Granada Hills, CA 92344

STATEMENT OF ISSUES

14 Respondent.

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16 Complainant alleges:

17 **PARTIES**

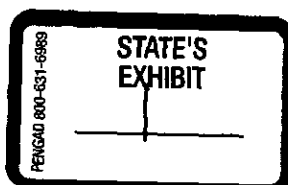
18 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Statement of
19 Issues solely in her official capacity as the Executive Officer of the Board of Registered Nursing
20 (Board), Department of Consumer Affairs.

21 2. On or about May 21, 2004, the Board received an Application for
22 Licensure by Examination from Robert Allan Shores (Respondent). On or about May 2, 2004,
23 Robert Allan Shores certified under penalty of perjury to the truthfulness of all statements,
24 answers, and representations in the application. The Board denied the application on September
25 8, 2005.

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JURISDICTION

3. This Statement of Issues is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 2736 of the Code provides, in pertinent part, that the Board may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under section 480 of that Code.

5. Section 480 of the Code states:

"(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

"(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

"(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or

"(3) Done any act which if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

"The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made."

6. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

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"(a) Unprofessional conduct, which includes, but is not limited to, the following:

...

"(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof."

FIRST CAUSE FOR DENIAL

(Conviction of Substantially Related Crimes)

7. Respondent's application is subject to denial under Code section 480, subdivision (a)(1), in that Respondent was convicted of crimes substantially related to the qualifications, functions and duties of a registered nurse. The circumstances are as follows:

a. On or about January 26, 2005, Respondent was convicted by the Court on a plea of nolo contendere to one count of violating Penal Code section 666, a felony (petty theft with prior), *which was reduced to a misdemeanor under P.C. 17B, amended* in the Superior Court of the State of California, County of Los Angeles, North Valley District, Case No. PA049754 entitled *The People of the State of California v. Robert Allan Shores, Jr.* *4-26-05*

b. The circumstances surrounding the conviction are that on or about October 27, 2004, Respondent entered How's Market and removed items without paying.

c. On or about October 4, 1997, Respondent was convicted by the Court on a plea of nolo contendere to one count of violation Vehicle Code section 23103, a misdemeanor (reckless driving) and one count of violating Vehicle Code section 23103.5, a misdemeanor (acceptance of plea of guilty or nolo contendere), in the Municipal Court of California, County of Los Angeles, Case No. 7SF05529, entitled *The People of the State of California v. Robert Allan Shores.*

d. The circumstances surrounding the conviction are that on or about August 7, 1997, Respondent was driving a vehicle while under the influence of an alcoholic beverage.

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District, Case No. 92P00044, entitled *The People of the State of California v. Robert Allan Shores*.

d. On or about April 10, 1992, Respondent was convicted by the Court on a plea of guilty to one count of violating Penal Code section 666 (petty theft with prior), a felony, in the Superior Court of California, North Valley Branch, Case No. PA007803, entitled *The People of the State of California v. Robert Allan Shores*.

e. On or about May 14, 1990, Respondent was found guilty by the Court to one count of violating Penal Code section 211 (second degree robbery), a felony, in the Superior Court of California, County of Los Angeles, North Valley Branch, Case No. PA001428, entitled *The People of the State of California v. Robert Alan Shores*.


PRAAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Denying the application of Robert Allan Shores for a Registered Nurse License.

2. Taking such other and further action as deemed necessary and proper.

DATED: 11/8/07


RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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CML (11/28/2006)